In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 941

WILLIAM H. MANESS AND BETTY R. MANESS,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In November, 1957, petitioner [1] was appointed to the office of Circuit Judge by the Governor of Florida and, as required by law, he discontinued his private practice of law. In order to continue in this office, petitioner stood for election in the 1958 Democratic Primary and General Election. Petitioner spent $1,590 in his campaign for re-election, paying the entire amount from his personal funds.[2] Petitioner

[1] Mrs. Maness is a party only because she filed a joint return with her husband for 1958; Mr. Maness will be referred to as petitioner.

[2] Petitioner paid the State an additional $810 as a qualifying fee and committee assessment which the district court held deductible as a tax. The government did not appeal from that holding.

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deducted this amount in his 1958 income tax return; the Commissioner disallowed the deduction, and, after paying the resulting deficiency and filing a claim for refund, petitioner brought suit in the district court. (Pet. App. 11.)

Petitioner claims that his campaign expenses are deductible as either (1) expenses incurred in a trade or business under § 162(a) of the Internal Revenue Code of 1954[3] or (2) expenses incurred for the production of income under § 212.[4] Both lower courts rejected these contentions on the authority of *McDonald* v. *Commissioner,* 323 U.S. 57. In the *McDonald* case this Court held that the campaign expenses of seeking re-election were not deductible business expenses under § 162(a) because they were not incurred in the business of being a judge but rather in trying to become a judge. In this respect they were no different than other nondeductible expenses of persons trying to get into a business or find employment.[5] Nor were these expenses deductible under § 212, since that section does not enlarge upon deductible business expenses but refers only to expenses of producing income from sources other than one's regular business.

In essence, petitioner seeks reconsideration of *McDonald.* As Mr. Justice Frankfurter noted in his

[3] Section 162(a) allows a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *."

[4] Section 212 allows an individual to deduct "all the ordinary and necessary expenses paid or incurred during the taxable year (1) for the production or collection of income; (2) for the management, conservation, or maintenance of property held for the production of income * * *."

[5] See Treasury Regulations on Iincome Tax, § 1.212-1(f), *infra.*

opinion for four members of the Court in *McDonald* (p. 63), "the relation of campaign expenditures to tax deductions * * * involves issues of far-reaching importance to a democracy," requiring express Congressional treatment and should not be subsumed under the general categories of deductible expenses.[6] However, in the nearly 23 years since *McDonald* Congress has not attempted to overturn either that decision or the Treasury Regulations which, since 1942, have denied a deduction for "campaign expenses of a candidate for public office."[7]

The *McDonald* decision has also been consistently followed by the appellate and lower courts which have considered the question. *Campbell* v. *Davenport,* 362 F. 2d 624 (C.A. 5); *Mays* v. *Bowers,* 201 F. 2d 401

[6] The same considerations preclude the amortization of these expenses as a capital expenditure (Pet. 24).

[7] This regulation first appeared in Treasury Regulations 103 (1939 Code), § 19.23(a)-15, added by T.D. 5196, 1942-2 Cum. Bull. 96. It now appears in Treasury Regulation § 1.212-1 which provides:

> (f) Among expenditures not allowable as deductions under section 212 are the following: Commuter's expenses; expenses of taking special courses or training; expenses for improving personal appearance; the cost of rental of a safe-deposit box for storing jewelry and other personal effects; expenses such as those paid or incurred in seeking employment or in placing oneself in a position to begin rendering personal service for compensation, campaign expenses of a candidate for public office, bar examination fees and other expenses paid or incurred in securing admission to the bar, and corresponding fees and expenses paid or incurred by physicians, dentists, accountants, and other taxpayers for securing the right to practice their respective professions. See, however, section 162 and the regulations thereunder.

(C.A. 4), certiorari denied, 345 U.S. 969; *Shoyer* v. *United States,* 290 F. 2d 817 (C.A. 3), certiorari denied, 368 U.S. 835; *Nichols* v. *United States,* 201 F. Supp. 337 (N.D. Ga.); and *Reed* v. *Commissioner,* 13 B.T.A. 513, reversed on other grounds, 34 F. 2d 263 (C.A. 3) reversed *per curiam,* 281 U.S. 699. Thus in *Mays* v. *Bowers, supra,* the court of appeals stated (p. 403):

> The salary of an office is paid for the performance of the duties of the office. Expenses incurred in such performance are proper deductions from income, but not expenses incurred in campaigning for the office. Expenses of barbecues, party campaign contributions, hiring of automobiles and pay of poll workers are certainly not expenses incurred in earning the salary of the office. If such deductions should be allowed, the government to the extent of the reduction in taxes thereby obtained would be paying the campaign expenses of the taxpayer, and would be paying a larger portion in the case of a wealthy taxpayer in the high income brackets than of a poor taxpayer in the lower brackets. In cases where the expenses of the campaign equalled or exceeded the salary of the office, which has been known to occur, the taxpayer would pay no tax upon his salary at all. Not until Congress unequivocally allows deductions which are fraught with the possibility of such absurd consequences should the courts sanction them.

The *McDonald* case has established a settled rule which ought not to be changed except by Congress. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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